NGEOW VOON YEAN

v.

SUNGEI WANG PLAZA SDN BHD & ANOR

COURT OF APPEAL, KUALA LUMPUR
MOHD NOOR AHMAD JCA
RICHARD MALANJUM JCA
HASHIM YUSOFF JCA
[CIVIL APPEAL NO: W-04-3-1998]
20 NOVEMBER 2003

LABOUR LAW: *Employment - Dismissal - Instruction of superior - Whether employee who doubts lawfulness of superior's instruction must always 'obey first and protest later' - Whether 'obey first, protest later' rule still applies if employee has no doubt that superior's order is manifestly unlawful - Employee falsely endorsing deeds of assignment - Whether negligence or misconduct justifying dismissal - Whether can rely on defence of 'obedience to orders of superior' - Consequence of defective domestic inquiry - Whether High Court exercised appellate jurisdiction*

ADMINISTRATIVE LAW: *Exercise of judicial functions - Judicial review - Certiorari proceedings - Jurisdiction of High Court in reviewing decision of Industrial Court - Whether can only exercise supervisory jurisdiction - Whether confined to reviewing errors of law - Whether can review findings of fact - When may High Court correct erroneous findings of fact made by inferior tribunals - Whether conclusions of Industrial Court 'perverse and so devoid of plausible justification that no reasonable body of persons could have reached it' - Employee falsely endorsing deeds of assignment - Whether negligence or misconduct justifying dismissal - Whether can rely on defence of 'obedience to orders of superior'*

This was an appeal from the decision of the High Court issuing *certiorari* to quash the award of the Industrial Court handed down earlier in favour of the plaintiff ('the claimant'). In finding for the claimant and awarding him back-wages, the Industrial Court had held that the dismissal of the claimant as the general manager of the respondent ('the company'), on grounds of gross negligence and/or misconduct, was without just cause or excuse, primarily because it was 'a glaring injustice' and because the domestic inquiry held was biased. The High Court, however, came to the conclusion that the findings of the Industrial Court were perverse and irrational and so unreasonable that no tribunal similarly circumstanced would have come to them.

The charge against the claimant which culminated in his dismissal was that he had falsely endorsed two deeds of assignment whilst he was the general manager of the company. The claimant contended that he was merely carrying out the orders of his superior, the executive director. The Industrial Court accepted this as a 'successful defence' to the charge. The High Court, however, disagreed that this was a good defence, holding that the Industrial Court had committed jurisdictional errors of law. The High Court found, inter alia, that: (i) there was no evidence that the claimant was forced or coerced, or was under the pressure or the effective control and dominant influence of the executive director, to endorse the two deeds; (ii) the claimant had admitted that he did not endorse the deeds out of the fear of losing his job; and (iii) the claimant knew that he entered the endorsements pursuant to wrongful or illegal orders.

Before the justices of appeal, the claimant's principal complaints were: (i) that the High Court did not focus on its supervisory jurisdiction or function of reviewing the alleged errors of law committed by the Industrial Court but had, instead, exercised appellate jurisdiction in interfering with the factual findings of the tribunal; (ii) that the High Court had misunderstood the law respecting the duty of an employee to obey the orders of his superiors first and protest later; and (iii) that the domestic inquiry held was flawed, biased and a sham.

Held (dismissing the appeal):
Per Richard Malanjum JCA

[1] As a general rule, the proper course for an employee who doubts the lawfulness or reasonableness of an order of his superior would be to obey the order first and challenge it later. However, if the employee is **in no doubt** that the order given is manifestly unlawful, then the general rule ceases to apply. In the instant case, the Industrial Court had **not** found, as a fact, that the claimant was in doubt as to the lawfulness of the order given to him by his executive director. Consequently, the claimant could not rely on the general rule that obedience to the orders of his superiors was legally and contractually expected of him. The High Court was, therefore, right in ruling against the claimant on this point. (p 18 a-g)

[2] The High Court would be (wrongly) exercising appellate jurisdiction if, in *certiorari* proceedings, it inquires into and disturbs the findings of fact made earlier by the Industrial Court based on the credibility of witnesses. It would, in other words, be utilising '*certiorari* proceedings

as a cloak to entertain what, in truth, is an appeal against findings of fact'. (*Quah Swee Khoon v. Sime Darby Bhd* [2001] 1 CLJ 9 CA.) **Nevertheless,** it would be misleading to think that the High Court is absolutely powerless to correct erroneous findings of fact made by such inferior tribunals. If a finding of fact is 'perverse and so devoid of plausible justification that no reasonable body of persons could have reached it', then such a finding is liable to be quashed for jurisdictional error. (*Malayan Banking Bhd v. Association Of Bank Officers Peninsular Malaysia & Anor* [1988] 1 CLJ 183 (Rep) SC.) In the instant case, the Industrial Court drew the factual inference that the claimant's position in the company would have been jeopardised had he refused to endorse the deeds of assignment in defiance of the instructions of his executive director. This inference was erroneous – as it was obvious from the established facts – that the claimant himself had admitted that he did not endorse the deeds out of the fear of losing his job. (p 19 a-f & h)

[3] A defective domestic inquiry, or even the absence of one, is not fatal to a dismissal which is otherwise not bad. Hence, the admittedly unsatisfactory domestic inquiry in the instant case did not play a pivotal role in determining the legality of the claimant's dismissal by the company. (pp 20 c-g & 21 a-b)

[Claimant's appeal dismissed; decision of High Court affirmed.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Ini adalah rayuan terhadap keputusan Mahkamah Tinggi kerana mengeluarkan *certiorari* bagi membatalkan award Mahkamah Perusahaan yang dibuat sebelumnya bagi manfaat plaintif ('yang menuntut'). Dalam membuat keputusan yang berpihak kepada plaintif dan membenarkan gaji kebelakangan, Mahkamah Perusahaan telah mendapati bahawa pembuangan kerja plaintif selaku Pengurus Besar responden ('syarikat'), atas alasan kecuaian dan/atau salahlaku berat, adalah tanpa sebab dan alasan yang adil, terutamanya kerana ia adalah 'satu ketidakadilan yang ketara' dan kerana penyiasatan dalaman yang diadakan adalah berpihak. Mahkamah Tinggi, bagaimanapun, berpandangan bahawa keputusan Mahkamah Perusahaan adalah tidak tepat dan tidak rasional, dan adalah sangat tidak munasabah sehinggakan tidak ada tribunal lain, yang berhadapan dengan halkeadaan yang serupa, akan mencapai keputusan sedemikian.

Tuduhan terhadap yang menuntut yang berakhir dengan pembuangan kerjanya adalah bahawa beliau telah secara palsu mengesahkan dua suratikatan serahhak semasa beliau menjadi Pengurus Besar syarikat. Yang menuntut mendakwa bahawa beliau hanyalah menurut arahan pegawai atasannya, iatu pengarah eksekutifnya. Mahkamah Perusahaan mendapati bahawa alasan ini adalah satu 'pembelaan yang berjaya' terhadap pertuduhan. Mahkamah Tinggi bagaimanapun tidak bersetuju dengan pandangan ini, sekaligus menyatakan bahawa Mahkamah Perusahaan telah melakukan satu kesilapan bidangkuasa. Antara lain, Mahkamah Tinggi berpendapat, bahawa: (i) tiada keterangan bahawa yang menuntut dipaksa, atau berada di bawah tekanan, kawalan ketat atau pengaruh dominan pengarah eksekutif untuk mengesahkan kedua-dua suratikatan; (ii) yang menuntut mengakui bahawa pengesahan surat-suratikatan tidak dibuat kerana takut kehilangan pekerjaan; dan (iii) yang menuntut tahu bahawa beliau membuat pengesahan berdasarkan arahan yang salah dan tak sah.

Di hadapan hakim-hakim rayuan, bantahan utama yang menuntut adalah: (i) bahawa Mahkamah Tinggi tidak menumpukan kepada tugas atau bidangkuasa seliaannya untuk mengkaji semula kesilapan undang-undang yang dikatakan dilakukan oleh Mahkamah Perusahaan, tetapi sebaliknya telah melaksanakan bidangkuasa rayuan apabila mengganggu dapatan-dapatan fakta tribunal tersebut; (ii) bahawa Mahkamah Tinggi telah tersalah faham undang-undang berkaitan tanggungjawab seorang pekerja yang harus terlebih dahulu mematuhi perintah-perintah pegawai atasannya sebelum membuat protes; dan (iii) bahawa penyiasatan dalaman yang diadakan adalah cacat, tidak bebas dan hanyalah dibuat-buat.

Diputuskan (menolak rayuan):
Oleh Richard Malanjum HMR

[1] Sebagai satu kaedah am, jalan yang sesuai bagi seorang pekerja yang meragui kesahan atau kemunasabahan sesuatu perintah pegawai atasannya adalah untuk mematuhi arahan tersebut dahulu dan mencabarnya kemudian. Bagaimanapun, jika pekerja tersebut tidak ragu-ragu bahawa perintah yang diberikan itu adalah jelas tak sah, maka kaedah am tersebut tidak lagi terpakai. Dalam kes semasa, Mahkamah Perusahaan tidak mendapati, sebagai satu fakta, bahawa yang menuntut ragu-ragu mengenai kesahan perintah yang diberi kepadanya oleh pengarah eksekutifnya. Oleh yang demikian, yang menuntut tidak boleh bergantung kepada kaedah am bahawa pematuhan kepada perintah-

perintah pegawai atasannya adalah pada sisi undang-undang dan kontraktual diharapkan darinya. Ianya mengikut bahawa Mahkamah Tinggi adalah betul bilamana membuat keputusan yang tidak berpihak kepada yang menuntut dalam hal ini.

[2] Mahkamah Tinggi akan (secara salah) melaksanakan bidangkuasa rayuannya jika, dalam prosiding *certiorari*, ia bertanyakan dan mengganggu dapatan-dapatan fakta yang dibuat sebelumnya oleh Mahkamah Perusaahan berdasarkan kepada kredibiliti saksi-saksi. Dengan lain perkataan, ia akan menggunakan 'prosiding certiorari sebagai alasan bagi melayani apa yang sebenarnya suatu rayuan terhadap dapatan-dapatan fakta' (*Quah Swee Khoon v. Sime Darby Berhad* [2001] 1 CLJ 9 CA). Walau bagaimanapun, adalah tidak tepat untuk berfikir bahawa Mahkamah Tinggi tidak berkuasa untuk membetulkan dapatan-dapatan fakta yang silap yang dibuat oleh tribunal bawahan seperti itu. Jika sesuatu dapatan fakta itu adalah 'salah dan sama sekali tidak masuk akal sehinggakan segolongan orang-orang yang munasabah tidak mungkin akan mencapainya', maka dapatan sedemikian adalah boleh dibatalkan atas alasan kesilapan bidangkuasa (*Malayan Banking Berhad v. Association of Bank Officers Peninsular Malaysia & Anor* [1988] 1 CLJ 183 (Rep) SC). Dalam kes semasa, Mahkamah Perusahaan membuat inferens fakta bahawa kedudukan yang menuntut dalam syarikat akan terjejas jika dia enggan mengesahkan surat-suratikatan serahhak seperti yang diarahkan oleh pengarah eksekutif. Inferens ini adalah silap – kerana jelas dari fakta-fakta yang dibuktikan – bahawa yang menuntut sendiri mengakui bahawa pengesahan surat-suratikatan tersebut bukanlah dibuat kerana beliau takut kehilangan kerjanya.

[3] Suatu siasatan dalaman yang cacat, ataupun ketiadaan siasatan dalaman, tidaklah fatal kepada suatu pembuangan kerja yang teratur. Oleh kerana itu, siasatan dalaman yang diakui tidak memuaskan di sini tidak memainkan peranan penting dalam menentukan kesahan pembuangan kerja yang menuntut oleh syarikat.

Rayuan yang menuntut ditolak; keputusan Mahkamah Tinggi disahkan.]

Case(s) referred to:

Dreamland Corporation (M) Sdn Bhd v. Choong Chin Sooi & Anor [1988] 1 CLJ 1; [1988] 1 CLJ (Rep) 39 SC ***(foll)***

KC Mathews v. Kumpulan Guthrie Sdn Bhd [1981] CLJ 40; [1981] CLJ (Rep) 62 FC ***(foll)***

Malayan Banking Bhd v. Association of Bank Officers, Peninsula Malaysia & Anor [1988] 1 CLJ 276; [1988] 1 CLJ (Rep) 183 SC ***(foll)***

Pan Global Textiles Bhd, Pulau Pinang v. Ang Beng Teik [2002] 1 CLJ 181 FC ***(refd)***

Quah Swee Khoon v. Sime Darby Bhd [2001] 1 CLJ 9 CA ***(refd)***

R Rama Chandran v. The Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

State Bank of India v. RK Jain AIR [1972] SC 136 ***(refd)***

For the appellant - C Das (KS Wang); M/s Wang Kuo Shing & Co
For the respondent - V Venugopal (Raymond Low); M/s Shearn Delamore & Co

[Appeal from High Court, Originating Motions No: R1-25-97-1993]

Reported by Gan Peng Chiang

JUDGMENT

Richard Malanjum JCA:

Introduction

This is an appeal against the decision of the High Court made on 29 December 1997 granting an order of *certiorari* to the respondent thereby quashing the award of the Industrial Court given to the appellant on 16 June 1993.

Briefly it was the finding of the Industrial Court that the dismissal of the appellant as the General Manager of the respondent on 12 February 1988 was without just cause in that the dismissal was 'an injustice' and that the domestic inquiry held to consider the charges against the appellant was biased. The appellant was therefore awarded backwages by way of compensation *in lieu* of reinstatement *vide* Award No. 179 of 1993.

In quashing the award the High Court came to the conclusion that it was perverse and irrational. Indeed the learned judge was of the view that the crucial findings of the Industrial Court were clearly unreasonable and irrational in that no reasonable tribunal in similar circumstances could have come to such conclusions.

Background Facts

It is not in dispute that the appellant began working for the respondent in 1977 when he was a management trainee. In 1980 he was appointed the Operations Manager. Subsequently he was appointed the General Manager for the respondent. Throughout his career with the respondent the appellant had Mr. Simon Chong as his superior.

On 27 October 1987 the appellant was suspended by the respondent pending further inquiry on the allegations against him.

On 24 December 1987 the appellant was informed that an inquiry would be held on 5 January 1988 in relation to two allegations against him, namely, for his conduct in endorsing on the two deeds of assignment in favour of two banks. The two allegations are as follows:

(a) Your endorsement in a deed of assignment dated 20.12.1985 and executed by Sa-Mula Jadi Sdn. Bhd. in favour of Arab-Malaysian Finance Berhad in respect of SG-001. In the endorsement you stated that the whole of the purchase price of RM2,722,500.00 payable by Sa-Mula Jadi had been paid in full on that date when in fact this was not the case.

(b) Your endorsement in a deed of assignment dated 25.04.1986 and executed by Sa-Mula Jadi Sdn. Bhd. in favour of Asia Commercial Finance (M) Bhd in relation to Basement 001. In the endorsement you stated that the whole of the purchase price of RM3,800,000.00 payable by Sa-Mula Jadi had been paid in full on that date when in fact this was not the case.

The result of the inquiry was that the appellant was found guilty on both the allegations for gross negligence and misconduct in the discharge of his duties as the General Manager of the respondent. On that basis the appellant was dismissed.

Incidentally despite learned counsel for the appellant before us submitting that the High Court made a wrong assumption that the endorsement on the two deeds were false, we do not think there was any dispute that the balances of the purchase prices were not settled and that the endorsement was false.

Arising there-from the appellant made a representation under s. 20(1) of the Industrial Relations Act 1967.

Before The Industrial Court

The main thrust of the appellant's case before the Industrial Court was that he acted as he did in endorsing on the two deeds because he was merely carrying out the orders of his superior, Mr. Simon Chong who was then the Executive Director of the respondent.

The Industrial Court accepted the explanations and reasons given by the appellant for endorsing on the two deeds and held that they constituted a reasonable, valid and 'successful defence of charges of negligence and misconduct'. And the conclusion was that the dismissal of the appellant was a 'glaring injustice and a dismissal without just cause or excuse'.

Other factors taken into account by the Industrial Court were that there was undue influence upon the appellant by his superior and that the police did not take any action against the appellant although there was a report lodged.

In The High Court

In making the application for an order of *certiorari* in the High Court the respondent sought to quash the award on the grounds of the same being perverse, irrational, unreasonable and was otherwise an act which went beyond the jurisdiction of the court.

And in granting the relief prayed for the learned judge found the Industrial Court to have committed serious errors of law which went to its jurisdiction principally on the basis that 'merely carrying out superior orders is not a defence if the orders carried out is to do something illegal or wrongful' and that where it can be shown that 'the drawing of the factual inference from established facts is perverse and so devoid of plausible justification that no reasonable body of persons could have reached it, such decision by the decision maker is liable to be quashed for jurisdictional error'. He also found that the Industrial Court took into account irrelevant matters and failed to consider relevant matters in coming to its decision.

Accordingly the learned judge ruled that it was erroneous for the Industrial Court to conclude that the appellant was just carrying out the order of his superior and thus had a complete defence for the allegations of negligence and gross misconduct. And his reasons for coming to such conclusion are as follows, *inter alia*:

(i) that there was no evidence to support that the appellant was put under any pressure or was under the effective control and dominant influence of Mr. Simon Chong at the material time;

(ii) that based on the admission by the appellant he entered the endorsement on the two deeds not out of fear of losing his job;

(iii) that there was no evidence of force or coercion applied in order to compel the appellant to enter the endorsement;

(iv) that the appellant knew that the direction was wrong but nevertheless did it out of love for his superior;

(v) that the issue of undue influence was never pleaded yet taken into account thus resulting in taking irrelevant matters into consideration; and

(vi) that the non-prosecution of the appellant had no bearing to his culpability for what he did as an employee of the respondent since the sole issue is whether his dismissal was with just cause or excuse.

The Appeal

Before us it was submitted for the appellant:

(a) that the High Court erred in interfering with the findings of the Industrial Court when it was only carrying a reviewing jurisdiction. There was therefore lack of focus on the error of law by the Industrial Court and the High Court assumed an appellate jurisdiction instead;

(b) that the High Court misunderstood the law regarding the duty upon an employee to first obey orders of a superior and protest later;

(c) that the domestic inquiry was flawed, biased and a sham yet the High Court failed to consider that the decision to dismiss the appellant was therefore tainted with bad faith;

(d) that the charges against the appellant was by the parent company and not by the respondent; and

(e) that the complaint against the appellant was for negligence yet he was dismissed for negligence and misconduct. The former has the element of carelessness while the latter involves intentional wrong doing.

In rebuttal learned counsel for the respondent supported the finding of the learned judge that merely carrying an order of a superior is not a good defence which an employee can rely upon. And he also submitted that the Industrial Court was wrong in taking into account the issues of undue influence when it was not pleaded and the non-prosecution of the appellant of any criminal charge.

Findings

(i) Order Of Superior In An Employer-Employee Relationship

Generally under employment law an employee is not entitled to disobey the order of his superior. Such precept is obvious since to allow disobedience of an order of a superior will bring a chaotic situation to any organization in terms of discipline, performance as well as industrial peace. That was made clear in the case of *Pan Global Textiles Bhd, Pulau Pinang v. Ang Beng Teik* [2002] 1 CLJ 181 where his Lordship Ahmad Fairuz FCJ (as he then was) at p. 197 reproduced this relevant passage:

> BR Ghaiye, in his book *'Misconduct in Employment'* (2nd Ed), at p 306, said:
>
> > Whether an employee is required to obey orders if it is doubtful whether the orders are legal or not
> >
> > It is generally held that the proper course for an employee is to obey the orders when it is given and protest about its illegality in separate proceedings. The distinction is made on the basis that if it is allowed to a worker to judge about the legality of every order and to disobey it, if he thinks it is not legal, it would be impossible for the management to get the work done. (*Rashtriya Girni Kamgar Sangh v. Genda Lal Mills Co* [1951] ICR 603 (1C); *Kalyanbhai Millji Bhai v. New National Mills Co Ltd, Ahmedabad* [1957] ICR 1052 (1C); *BM Kastura v. Swadeshi Mills Co Ltd* [1973] ICR (1C)). If an employee takes upon himself to disobey an order which he thinks not lawful or unreasonable, two courses are open to him. He can point out his difficulties, if any, to the superior and if the latter insists on the order being carried out, he can do the work and take up the matter through the union. If he disobeys he must take the risk, if the court finds that the order was lawful and reasonable. (*RMMS, Bombay v. Phoenix Mills Ltd* [1958] ICR 154 (1C)). When a worker refused to comply with the instructions of his superiors and his defence was that he wanted to verify whether the order was approved by the Manager it amounted to insubordination and dismissal is justified. (*Cambodia Mills Ltd, Coimbatore v. Industrial Tribunal, Madras* [1959] 11 LLJ 80 (Mad HC)). The above principle also applies to transfer orders. If an employee tries to disobey apparently lawful order on the ground of illegality it would be difficult for the management to maintain discipline and industrial peace. It is the duty of the employee to first obey the order and then challenge it. (*Abdul Latif v. New Prakash Transport Co (Pvt) Ltd* [1974] ICR 1 (IC)).

From the short passage it can be discerned that obedience is expected of an employee where he is in doubt of the legality or reasonableness of an order by a superior. But if it is obvious to an employee that an order given is manifestly wrong and he is very conscious of such fact, we are of the opinion that the general rule should not apply. In such a situation we do not think the issue of fear of dismissal should arise in the mind of the employee for if indeed such an event happens, his rights as an employee is assured.

Reverting to the present case the Industrial Court did not find that the appellant was in doubt as to the legality of the order of Mr. Simon Chong. Rather it was on the basis that the appellant was under:

(i) the 'effective control and dominant influence' of Simon Chong considering the daily association and interaction between them;

(ii) that he was bound by his terms of employment to obey any instruction of Simon Chong and hence he was therefore in no position legally and contractually to refuse to carry out any order given; and

(iii) that although he knew of the true position of the transactions at the material time he went on to endorse on the deeds based on the assurance given by his superior Mr. Simon Chong.

Accordingly in view of the reasons of the appellant in obeying the order of Mr. Simon Chong we do not think he can rely as an excuse for what he did on the generally accepted rule of obedience expected of an employee.

To extend the rule to mean that an employee is expected to follow any order of a superior even when knowing well of the illegal nature of such order could also lead to a chaotic situation in any organization.

And further, there would be nothing to prevent an unscrupulous superior from making use of his subordinate to do unlawful actions well aware that the subordinate may have a good excuse.

We are therefore in agreement with the conclusion of the learned High Court judge that obedience expected from an employee to orders of his superior is not without limit. And on this ground alone that the learned High Court Judge was justified in granting the order sought for.

Interference Of Finding Of Fact By The High Court

As indicated above it was also the complaint of the appellant that the High Court Judge interfered with the finding of fact by the Industrial Court and hence he failed to observe the nature of the application before him.

With respect we do not think it is an absolute rule that the High Court or a higher adjudicating body is deprived of any power to correct any obvious erroneous finding of fact by an inferior tribunal. If a finding is 'perverse and so devoid of plausible justification that no reasonable body of persons could have reached it, such decision by the decision maker is liable to be quashed for jurisdictional error.' – per Abdolcader SCJ in *Malayan Banking Bhd v. Association of Bank Officers, Peninsula Malaysia & Anor* [1988] 1 CLJ 276; [1988] 1 CLJ (Rep) 183.

Of course there is limitation to such power as indicated in the case of *Quah Swee Khoon v. Sime Darby Bhd* [2001] 1 CLJ 9 where this court expressed a view that when a judge before whom an application is made for *certiorari* inquires into and disturbs finding of facts based on the credibility of witnesses, he is actually exercising appellate functions, hence contrary to the review nature of such application.

In the present case the Industrial Court came to a finding that had the appellant refused to comply with the instruction of Mr. Simon Chong that would have been an 'open defiance of authority and insubordination that could jeopardize his position in the company'.

However that finding was not in tandem with the stand of the appellant in that it was not out of fear of losing his job that he endorsed on the deeds. It was because of the instruction given by Mr. Simon Chong and that he knew the instruction was wrong but for the assurance that the money would be collected. Obviously the interest of the respondent was never the priority in the mind of the appellant. The Industrial Court was therefore in error to come to such conclusion upon which the defence of superior order was then justified when there was no basis or that it was an erroneous ground.

One other issue raised by the Industrial Court was on the issue of alleged undue influence exerted upon the appellant by Mr. Simon Chong. It was not in dispute that such point was not part of the pleaded case of the appellant. And neither was the evidence directed to that point. It was solely the conclusion of the Industrial Court without much regard to the pleadings and the evidence adduced. (See: *R Rama Chandran v. The Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147).

The learned High Court Judge was therefore correct in reviewing the erroneous findings of the Industrial Court. Indeed it was not an exercise involving assessment of credibility of any witness. There is therefore no merit in the contention of the appellant on this issue.

Domestic Enquiry

It was conceded by learned counsel for the respondent that the domestic enquiry held to consider the case of the appellant was flawed. But it was also submitted that such defect was not fatal to the case of the respondent.

Learned counsel for the appellant emphasised that there was in fact no enquiry held by the actual employer of the appellant but only by the parent company.

Having perused the authorities we are in agreement with learned counsel for the respondent that defect or even absence of domestic enquiry should not be considered fatal thereby making dismissal of an employee bad. In *KC Mathews v. Kumpulan Guthrie Sdn Bhd* [1981] CLJ 40; [1981] CLJ (Rep) 62 the Federal Court opined thus:

> Secondly, he said that the dismissal was bad because there had been no enquiry. The learned trial judge in his judgment did not deal with the second point and it is not quite clear from the memorandum of appeal whether the appellant continued to rely on his complaint of breaches of natural justice. In our view, however, there is absolutely no point in this part of the submission. No enquiry needed to be called for in the circumstances of the case. There was evidence which the appellant could not and did not deny that in the course of his brief employment he had been told on several occasions of the unsatisfactory nature of his work, his lack of industry and initiative. His acceptance of a further period of probationary employment must be regarded as an acceptance of the condition that he had to prove his suitability for confirmed service. Unfortunately, his willingness was never translated into action. The appellant knew at all times how dissatisfied his employer was with him and he must have known, having regard to the terms of the letter of appointment, that he was running the risk of dismissal. All he had to do was to produce the work required of him. He never did. The enquiry that he now required would have served no useful purpose ... per Raja Azlan Shah CJ (Malaya) (as he then was) at p. 321.

And in *Dreamland Corporation (M) Sdn Bhd v. Choong Chin Sooi & Anor* [1988] 1 CLJ 1; [1988] 1 CLJ 39 his Lordship Wan Sulaiman SCJ in delivering the judgment briefly examined the positions in some common law countries which invariably held that failure to hold enquiry before dismissal of an employee was not fatal. (See also: *State Bank of India v. R.K. Jain* AIR [1972] SC 136).

In the present case the crucial facts were not disputed specifically that the appellant did endorse on the deeds knowing well the true position that the balance sums were yet to be paid by the buyer of the properties. The determining issue on the legality of his dismissal was therefore very much a question of law and that had been dealt with by the Industrial Court and the High Court. Hence we do not think a domestic enquiry would have played any pivotal role on the issue. Accordingly the fact that the domestic enquiry was flawed or that it was held by the parent company instead of by the respondent should not be ruled as fatal to the decision in dismissing the appellant.

Negligence And Misconduct

It was the contention of learned counsel for the appellant that the grounds for dismissing the appellant were unclear. In the minutes of the parent company it was on the basis of negligence. But in the dismissal letter the grounds were negligence and misconduct. And it was further submitted that the elements of these two differ in that the first involves carelessness while the other an intentional act.

With respect, we do not think the foregoing contention is of any relevance in view of the main defence raised by the appellant, namely, obedience of superior order and the conclusions of the High Court and this court on the issue.

Conclusion

For the above reasons we dismiss this appeal by the appellant and affirm the decision of the High Court. Costs to the respondent to be taxed. Deposit to be paid to the respondent on account of taxed costs.